

Tanana Chiefs Conference

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August 6, 2003

SUBREGIONS

KUSKOKWIM

McGrath
Medfra
Nikolai
Taketna
Telida

LOWER YUKON

Anvik
Grayling
Holy Cross
Shageluk

UPPER TANANA

Dof Lake
Eagle
Healy Lake
Northway
Tanadross
Tetlin
Tok

YUKON FLATS

Arctic Village
Beaver
Birch Creek
Canyon Village
Chukotk
Circle
Fort Yukon
Venetie

YUKON

KOYUKUK

Galena
Huslia
Kallag
Koyukuk
Nimrod
Ruby

YUKON TANANA

Alatna
Allakaket
Evensville
Fairbanks
Hughes
Lena
Minto
Monte Vista
Sleetna
Minto
Nenana
Rampart
Sleetna Village
Tanana

Chief, Branch of Lands
Bureau of Land Management
222 West Seventh Avenue, #13
Anchorage, AK 99513
Fax (907) 271-5479

****By Fax and U.S. Mail****

Re: Black River disclaimer comments

To Whom It May Concern:

Tanana Chiefs Conference (TCC) is a consortium of 42 Interior Alaska Athabascan tribes, including 37 federally recognized tribes, that is organized as an Alaska non-profit corporation. As the President of TCC, I am charged with representing and advocating on behalf of TCC's member tribes. I am writing today to comment on the Bureau of Land Management's proposed rule entitled: "Notice of Application for a Recordable Disclaimer of Interest for Lands Underlying a Portion of the Black River, the Black River Slough, the Salmon Fork, the Grayling Fork, and Bull Creek Located in Northeastern Alaska" as published in the May 8, 2003 Federal Register at Volume 68, Number 89, Page 24754. I have the following comments and questions regarding the proposed rule:

1. The 90-day period for public comments following the publication of the proposed rule in the federal register is inadequate for several reasons:
 - a. The comment period could not have come at a worse time of year for receiving meaningful public comment from the people most affected by the proposed rule. Summer is the subsistence season in Alaska, including the subsistence salmon fishing season. The 90-day period coincidentally runs through the middle of this subsistence fishing season following the May 8 publication. As the attached recent letter from the Honorable Senator Lisa Murkowski to the Denali Commission on this same issue illustrates, a short public comment period running through the middle of the Alaska summer on an issue that affects rural Alaskans is not reasonable. Because the public comment period is timed so as to minimize public comment, we respectfully ask that it be extended by 90 days.
 - b. The public comment period is also too short. The recordable disclaimer procedure as presented in the proposed rule is new and unique to Alaska. It involves some rather archaic principles of federalism, constitutional law, and administrative procedure. It takes time for technically trained people to research and understand the proposal and then communicate the issues back to the affected rural residents. A 90-day period from

publication to the due date for meaningful responses is wholly inadequate. As such, we respectfully request that the public comment period be extended by 90 days.

2. Neither the State of Alaska (the State) nor the Bureau of Land Management (BLM) has traveled to Chalkyitsik or Fort Yukon to consult with the Tribal governments or hold public meetings. The State did not identify adverse claimants to the land for the simple reason that they did not talk to the people who live in the area. Consequently, the assertion in the proposed rule may be inaccurate and misleading.
3. The State and BLM's collective failure to communicate and hold public meetings with the locally affected residents raises two more troubling issues:
 - a. The mixed question of law and fact as to whether the Black River was navigable at the relevant time logically requires interviews with the local residents—the people most knowledgeable as to the River's navigability. Apparently, the State and the BLM felt that this decision could be made more conveniently from afar, without any input from the persons most knowledgeable of the facts. Why weren't local residents interviewed about the historical question of navigability?
 - b. The State and the BLM apparently feel like this precedent-setting procedure that has ramifications across the entire State of Alaska requires no public input or public process at the local level with the residents most affected by the decision. Why weren't local public meetings held to solicit input from the people who would be most directly impacted by the proposed rule?
4. There are numerous cultural sites of Chalkyitsik people along the Black River that have not been considered, including grave sites. These sites demonstrate that the people of the area are previous occupants and have a vested interest in being consulted on the federal decision. This issue raises three important questions:
 - a. Does the disclaimer relieve the BLM of its National Historic Preservation Act responsibility to manage sites eligible for the National Register of Historic Places?
 - b. If so, has the BLM completed the Section 106 review for those historic properties that will be affected by the disclaimer rule?
 - c. Will the proposed disclaimer and the subsequent transfer of ownership to the State negatively impact the historic, cultural, and archeological resources contained in the affected property?
5. There are numerous Native allotments that will be affected because the proposed disclaimer would lead to a different style of land management. Will the transfer subsequent to the proposed disclaimers negatively affect land use or ownership attributes of Native allotments fronting on the affected waterways, and specifically:
 - a. Would a transfer to State ownership and management increase the incidence of trespassing on restricted Native lands?

- b. Would a transfer to State ownership change the principles of accretion, avulsion, and erosion on the land area of Native allotments fronting on the affected waterways?
 - c. If some of the waterways, or portions thereof, such as sloughs, tributaries, and oxbow lakes are in fact non-navigable and contained within the boundaries of Native allotments, shouldn't the United States retain an ownership interest in such non-navigable waterways as trustee for the particular Native allottees—a position contrary to the proposed disclaimers?
- 6. There is a moose management cooperative agreement in the area; has that been taken into account with the proposed disclaimer?
- 7. State management of the riverbed could lead to a substantive shift in land management principles affecting private use of the riverbed. Possible examples of such a shift are increased mining activities under state law as opposed to federal law and the State's submerged lands management policy for leases and permits. Have those potential impacts been considered?
- 8. Has BLM followed its General Procedural Guidance for Native American Consultation (BLM Manual Handbook H-8160-1)?
- 9. Has BLM consulted with the BIA as part of its requirement to coordinate with other federal agencies given the existence of Native allotments fronting on the affected waterways and historic and archeological sites of the Native residents in the area?
- 10. The proposed disclaimer rule is controversial, precedent setting, and may affect historic properties eligible for nomination to the National Register of Historic Places. For these reasons alone, the disclaimer process should be subject to a wider National Environmental Policy Act (NEPA) review. As shown throughout these comments, the proposed rule would have numerous potentially negative effects on the natural environment through the shift from the federal management regime to the State's management regime.
 - a. Is the proposed rule a major federal action?
 - b. Should an environmental assessment or an environmental impact statement be prepared with appropriate Tribal consultation to meet the minimal requirements of NEPA?
- 11. The State has historically used a much lower threshold for navigability. Has the BLM acquiesced to the State's factual assertion of navigability, or has the BLM utilized its own threshold and conducted its own factual investigation to confirm the navigability of the waterways covered by the proposed rule?
- 12. The State has historically claimed so-called "public access easements" between navigable waterways that are in close proximity to each other. How does the proposed rule address the State's practice and its impact upon federal, Native Corporation, and Native allotment lands adjacent to the waterways covered by the proposed rule?

Thank you for your consideration of my questions and concerns. If you have questions or comments, or if you need assistance in establishing better dialogue with the residents affected by the proposed disclaimers, please contact me at (907) 452-8251, ext. 3112.

Sincerely,

TANANA CHIEFS CONFERENCE



Harold "Buddy" Brown, Esq.
President and Chairman

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Attachment: Letter from the Honorable U.S. Senator Lisa Murkowski dated July 20, 2003